

SENATE JOURNAL OF THE IDAHO LEGISLATURE

SECOND REGULAR SESSION
FIFTY-SEVENTH LEGISLATURE

**FORTY-SIXTH LEGISLATIVE DAY
THURSDAY, FEBRUARY 26, 2004**

Senate Chamber

President Pro Tempore Geddes called the Senate to order at 9:30 a.m.

Roll call showed all members present except Senators Davis and Williams, absent and formally excused by the Chair; and Senators Brandt, Burkett, Keough, Schroeder, and Stennett, absent and excused.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Alex Calkins, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of February 25, 2004, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Stegner, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

SCR 130

BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND APPROVING ADMINISTRATIVE RULES THAT IMPOSE A FEE OR CHARGE, WITH AN EXCEPTION, AND REJECTING CERTAIN AGENCY RULES THAT ARE NOT APPROVED.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature pursuant to Section 67-5224, Idaho Code, must approve certain administrative rules that impose a fee or charge by adoption of a concurrent resolution before the rules become effective; and

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain sections of Rules of the Division of Building Safety relating to installation of heating, ventilation, and air conditioning systems are not consistent with legislative intent; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-seventh Idaho Legislature, the Senate and the House of Representatives concurring therein, that all pending administrative rules or portions of pending administrative rules adopted by state agencies pursuant to the Administrative Procedure Act during the prior calendar year, and submitted through the Office of Rules Coordinator to the Legislature for review during the 2004 legislative session, which impose a fee or charge, be, and the same are approved, with the exception of the following enumerated pending fee rules:

IDAPA 07.07.01, Section 024 concerning HVAC apprentice requirements for registration, Section 061 concerning HVAC installation permit and inspection fees prior to commencement of work, and Section 062 concerning HVAC installation permit and inspection fees after commencement of work, Rules of the Division of Building Safety relating to installation of heating, ventilation, and air conditioning systems, adopted as pending fee rules under Docket Number 07-0701-0301, the above enumerated sections only.

BE IT FURTHER RESOLVED by the members of the Second Regular Session of the Fifty-seventh Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 07.07.01, Section 024 concerning HVAC apprentice requirements for registration, Section 061 concerning HVAC installation permit and inspection fees prior to commencement of work, and Section 062 concerning HVAC installation permit and inspection fees after commencement of work, Rules of the Division of Building Safety relating to installation of heating, ventilation, and air conditioning systems, adopted as pending fee rules under Docket Number 07-0701-0301, the above enumerated sections only, be, and the same are hereby rejected and not approved, and thereby pursuant to Section 67-5291 and Section 67-5224, Idaho Code, are declared null, void and of no force and effect.

BE IT FURTHER RESOLVED by the members of the Second Regular Session of the Fifty-seventh Idaho Legislature, the Senate and the House of Representatives concurring therein, that rule provisions imposing fees or charges that were not submitted through the Office of Rules Coordinator for legislative review or that otherwise are not included and approved in this concurrent resolution shall be null, void and of no force and effect unless approved by adoption of a separate concurrent resolution by both houses of the Legislature as provided in Section 67-5224, Idaho Code.

SCR 131
BY STATE AFFAIRS COMMITTEE
A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND APPROVING
 AND EXTENDING TEMPORARY RULES REVIEWED BY
 THE LEGISLATURE, WITH AN EXCEPTION.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature by statute must approve temporary rules by adoption of a concurrent resolution approving the rule if the temporary rule is to remain in effect beyond the end of the current legislative session; and

WHEREAS, the expiration of temporary rules would occasion additional expense to state agencies in readopting and republishing temporary rules needed to conduct state business; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-seventh Idaho Legislature, the Senate and the House of Representatives concurring therein, that all temporary rules adopted by state agencies pursuant to the Administrative Procedure Act and submitted to the Legislature at the Legislature's request through the Office of Rules Coordinator for review during the 2004 legislative session, and all temporary rules previously approved and extended by concurrent resolution adopted in a prior regular session of the Idaho Legislature, be, and the same are approved, with the exception of the following enumerated temporary rules:

IDAPA 57.01.01, the entire rulemaking docket, related to rules governing the Sexual Offender Classification Board, rules of the Sexual Offender Classification Board, adopted as temporary rules under Docket Number 57-0101-0401.

BE IT FURTHER RESOLVED that a temporary rule or partial temporary rule approved by this concurrent resolution shall remain in effect until it expires by its own terms or by operation of law or until it is replaced by a final rule, but in no event shall a temporary rule remain in effect beyond the conclusion of the First Regular Session of the Fifty-eighth Idaho Legislature unless it is further extended by adoption of a concurrent resolution by both houses of the Legislature. Temporary rules or sections of temporary rules which are excepted from approval hereunder or which were not submitted to the Legislature for review during the 2004 legislative session shall expire by operation of statute upon adjournment of the Second Regular Session of the Fifty-seventh Idaho Legislature, unless approved by adoption of a separate concurrent resolution by both houses of the Legislature.

SCR 130 and **SCR 131** were introduced, read at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senators Schroeder and Stennett were recorded present at this order of business.

February 26, 2004

The JUDICIARY AND RULES Committee reports that **S 1396, S 1397, S 1398, S 1399, S 1400, S 1401, S 1402, and S 1403** have been correctly printed.

DARRINGTON, Chairman

S 1396, S 1397, S 1398, S 1399, S 1400, S 1401, S 1402, and S 1403 were referred to the Finance Committee.

February 25, 2004

The JUDICIARY AND RULES Committee reports that **S 1253** has been correctly enrolled.

DARRINGTON, Chairman

The President Pro Tempore signed Enrolled **S 1253** and ordered it transmitted to the House for the signature of the Speaker.

February 25, 2004

The HEALTH AND WELFARE Committee reports out **S 1288** with the recommendation that it do pass.

BRANDT, Chairman

S 1288 was filed for second reading.

February 25, 2004

The EDUCATION Committee reports out **S 1344, S 1331, S 1347, S 1358, S 1361, S 1345, and S 1348** with the recommendation that they do pass.

SCHROEDER, Chairman

S 1344, S 1331, S 1347, S 1358, S 1361, S 1345, and S 1348 were filed for second reading.

February 25, 2004

The FINANCE Committee reports out **H 718, H 721, H 722, and H 723** with the recommendation that they do pass.

CAMERON, Chairman

H 718, H 721, H 722, and H 723 were filed for second reading.

February 25, 2004

The JUDICIARY AND RULES Committee reports it has had under consideration the Gubernatorial appointment listed below and the Committee recommends that said appointment be confirmed by the Senate:

Del Ray Holm to the Commission on Pardons and Parole, term to expire January 1, 2007.

DARRINGTON, Chairman

The Gubernatorial appointment was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

February 25, 2004

The JUDICIARY AND RULES Committee reports out **S 1333** and **H 518** with the recommendation that they do pass.

DARRINGTON, Chairman

S 1333 and **H 518** were filed for second reading.

February 26, 2004

The FINANCE Committee reports out **S 1396**, **S 1397**, **S 1398**, **S 1399**, **S 1400**, **S 1401**, **S 1402**, and **S 1403** with the recommendation that they do pass.

CAMERON, Chairman

S 1396, **S 1397**, **S 1398**, **S 1399**, **S 1400**, **S 1401**, **S 1402**, and **S 1403** were filed for second reading.

February 25, 2004

The JUDICIARY AND RULES Committee reports out **S 1371** with the recommendation that it do pass.

DARRINGTON, Chairman

S 1371 was filed for second reading.

February 25, 2004

The STATE AFFAIRS Committee reports it has had under consideration the Gubernatorial appointment listed below and the Committee recommends that said appointment be confirmed by the Senate:

Sandra Twiggs to the Idaho Commission on Human Rights, term to expire July 1, 2006.

SORENSEN, Chairman

The Gubernatorial appointment was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

February 25, 2004

The STATE AFFAIRS Committee reports out **S 1260** with the recommendation that it do pass.

SORENSEN, Chairman

S 1260 was filed for second reading.

February 25, 2004

The STATE AFFAIRS Committee reports out **S 1373** with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

SORENSEN, Chairman

There being no objection, **S 1373** was referred to the Fourteenth Order of Business, General Calendar.

February 26, 2004

The LOCAL GOVERNMENT AND TAXATION Committee reports out **H 537** and **H 538** with the recommendation that they do pass.

BUNDERSON, Chairman

H 537 and **H 538** were filed for second reading.

On request by Senator Stegner, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

Senator Brandt was recorded present at this order of business.

February 25, 2004

Mr. President:

I transmit herewith **HCR 40**, **HJM 17**, **H 658**, **H 645**, **HCR 44**, **H 663**, **H 732**, **H 733**, **H 734**, **H 735**, **H 736**, **H 737**, **H 620**, **H 706**, **H 700**, **H 635**, **H 669**, **HCR 46**, and **HCR 47** which have passed the House.

JUKER, Chief Clerk

HCR 40, **HJM 17**, **H 658**, **H 645**, **HCR 44**, **H 663**, **H 732**, **H 733**, **H 734**, **H 735**, **H 736**, **H 737**, **H 620**, **H 706**, **H 700**, **H 635**, **H 669**, **HCR 46**, and **HCR 47** were filed for first reading.

February 25, 2004

Mr. President:

I return herewith **SJM 105** and **SJM 106** which have passed the House.

JUKER, Chief Clerk

SJM 105 and **SJM 106** were referred to the Judiciary and Rules Committee for enrolling.

The Senate advanced to the Tenth Order of Business.

Motions and Resolutions

Senators Burkett and Keough were recorded present at this order of business.

On request by Senator Schroeder, granted by unanimous consent, **SCR 125** retained its place on the calendar.

The Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1404

BY FINANCE COMMITTEE AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

S 1405

BY FINANCE COMMITTEE AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF COMMERCE FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

S 1406

BY JUDICIARY AND RULES COMMITTEE AN ACT

RELATING TO CHARTER SCHOOLS; AMENDING SECTION 33-5203, IDAHO CODE, TO STRIKE A LIMIT ON THE NUMBER OF CHARTER SCHOOLS AND TO IMPOSE A PROXIMITY LIMIT ON THE LOCATION OF NEW CHARTER SCHOOLS.

S 1407

BY JUDICIARY AND RULES COMMITTEE AN ACT

RELATING TO SALARIES OF JUDGES; AMENDING SECTION 1-2222, IDAHO CODE, TO INCREASE THE BASE ANNUAL SALARY OF NONATTORNEY MAGISTRATES; AND AMENDING SECTION 59-502, IDAHO CODE, TO INCREASE THE ANNUAL SALARIES OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE DISTRICT COURTS.

S 1404, S 1405, S 1406, and S 1407 were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

HCR 40, by Environmental Affairs Committee, was introduced, read at length, and referred to the Health and Welfare Committee.

HJM 17, by Health and Welfare Committee, was introduced, read at length, and referred to the Health and Welfare Committee.

H 658, by Health and Welfare Committee, was introduced, read the first time at length, and referred to the Health and Welfare Committee.

H 645, by State Affairs Committee, was introduced, read the first time at length, and referred to the State Affairs Committee.

HCR 44, by State Affairs Committee, was introduced, read at length, and referred to the State Affairs Committee.

H 663, by Revenue and Taxation Committee, was introduced, read the first time at length, and referred to the Local Government and Taxation Committee.

H 732, H 733, H 734, H 735, H 736, and H 737, by Appropriations Committee, were introduced, read the first time at length, and referred to the Finance Committee.

H 620 and H 706, by Business Committee, were introduced, read the first time at length, and referred to the Commerce and Human Resources Committee.

H 700, H 635, and H 669, by Resources and Conservation Committee, were introduced, read the first time at length, and referred to the Resources and Environment Committee.

HCR 46 and HCR 47, by Commerce and Human Resources Committee, were introduced, read at length, and referred to the Commerce and Human Resources Committee.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

H 605, by Health and Welfare Committee, was read the second time at length and filed for third reading.

H 611, by Environmental Affairs Committee, was read the second time at length and filed for third reading.

S 1385, S 1386, and S 1387, by Finance Committee, were read the second time at length and filed for third reading.

H 715, by Appropriations Committee, was read the second time at length and filed for third reading.

S 1311 and S 1274, by Transportation Committee, were read the second time at length and filed for third reading.

H 488, H 493, H 489, H 491, H 494, H 495, H 497, H 490, H 492, and H 496, by Business Committee, were read the second time at length and filed for third reading.

H 487, by Business Committee, was read the second time at length and filed for third reading, Consent Calendar.

H 549, by Agricultural Affairs Committee, was read the second time at length and filed for third reading.

The Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

On request by Senator Stegner, granted by unanimous consent, **S 1266** retained its place on the Third Reading Calendar.

On request by Senator Stegner, granted by unanimous consent, **S 1271** was referred to the Fourteenth Order of Business, General Calendar.

S 1224 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Bailey arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Cameron, Compton, Darrington, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk. Total - 32.

NAYS--Calabretta. Total - 1.

Absent and excused--Davis, Williams. Total - 2.

Total - 35.

Whereupon the President Pro Tempore declared **S 1224** passed, title was approved, and the bill ordered transmitted to the House.

S 1340 was read the third time at length, section by section, and placed before the Senate for final consideration. Senators Goedde and Stennett arose as co-sponsors of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Bunderson, Burkett, Calabretta, Cameron, Compton, Darrington, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noh, Schroeder, Sorensen, Stegner, Stennett, Werk. Total - 27.

NAYS--Brandt, Burtenshaw, Noble, Pearce, Richardson, Sweet. Total - 6.

Absent and excused--Davis, Williams. Total - 2.

Total - 35.

Whereupon the President Pro Tempore declared **S 1340** passed, title was approved, and the bill ordered transmitted to the House.

On motion by Senator Stegner, seconded by Senator Stennett, by voice vote the Senate recessed at 12:25 p.m. until the hour of 4:30 p.m. of this day.

**RECESS
AFTERNOON SESSION**

The Senate reconvened at 4:30 p.m., pursuant to recess, President Pro Tempore Geddes presiding.

Roll call showed all members present except Senators Davis, Sweet, Werk, and Williams, absent and formally excused by the Chair; and Senators Gannon, Lodge, Noble, Noh, Pearce, and Schroeder, absent and excused.

Prior to recess the Senate was at the Thirteenth Order of Business, Third Reading of Bills.

S 1234, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senators Bunderson and Burkett arose as co-sponsors of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Malepeai, Marley, McKenzie, McWilliams, Richardson, Sorensen, Stegner, Stennett. Total - 24.

NAYS--None.

Absent and excused--Davis, Gannon, Little, Lodge, Noble, Noh, Pearce, Schroeder, Sweet, Werk, Williams. Total - 11.

Total - 35.

Whereupon the President Pro Tempore declared **S 1234**, as amended, passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Stegner, granted by unanimous consent, **S 1232**, as amended, retained its place on the Third Reading Calendar for one legislative day.

Senators Lodge, Noble, and Noh were recorded present at this order of business.

S 1279, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Brandt arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Richardson, Schroeder, Stegner, Stennett. Total - 28.

NAYS--None.

Absent and excused--Davis, Gannon, Pearce, Sorensen, Sweet, Werk, Williams. Total - 7.

Total - 35.

Whereupon the President Pro Tempore declared **S 1279**, as amended, passed, title was approved, and the bill ordered transmitted to the House.

Senators Davis and Gannon were recorded present at this order of business.

S 1243, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Darrington arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett. Total - 32.

NAYS--None.

Absent and excused--Sweet, Werk, Williams. Total - 3.

Total - 35.

Whereupon the President Pro Tempore declared **S 1243**, as amended, passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Gannon, granted by unanimous consent, **S 1312**, as amended, was referred to the Fourteenth Order of Business, General Calendar.

S 1299 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Compton arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Marley, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner. Total - 27.

NAYS--Burkett, Davis, Malepeai, McKenzie. Total - 4.

Absent and excused--Stennett, Sweet, Werk, Williams. Total - 4.

Total - 35.

Whereupon the President Pro Tempore declared **S 1299** passed, title was approved, and the bill ordered transmitted to the House.

S 1316 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Brandt arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Brandt, Burkett, Calabretta, Compton, Davis, Goedde, Ingram, Kennedy, Little, Malepeai, Marley, Noh, Schroeder, Stegner, Stennett. Total - 15.

NAYS--Bailey, Bunderson, Burtenshaw, Cameron, Darrington, Gannon, Geddes, Hill, Keough, Lodge, McKenzie, McWilliams, Noble, Pearce, Richardson, Sorensen. Total - 16.

Absent and excused--Andreason, Sweet, Werk, Williams. Total - 4.

Total - 35.

Whereupon the President Pro Tempore declared that **S 1316** had failed to pass the Senate and ordered the bill filed in the office of the Secretary of the Senate.

On request by Senator Stegner, granted by unanimous consent, all Senate bills were placed at the head of the Third Reading Calendar, followed by House bills amended in the Senate, followed by House bills.

On request by Senator Stegner, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Stegner, seconded by Senator Stennett, by voice vote the Senate adjourned at 6:05 p.m. until the hour of 9:30 a.m., Friday, February 27, 2004.

ROBERT L. GEDDES, President Pro Tempore

Attest: JEANNINE WOOD, Secretary